

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

E. ELIZABETH LEWIS,

Complainant,

PEORIA HOUSING AUTHORITY,

Respondent.

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Charge No.: 1999SF0828

EEOC No.: 21BA52383

ALS No.: 10444

RECOMMENDED ORDER AND DECISION

This matter is ready for consideration of Complainant E. Elizabeth Lewis's *Petition for Attorneys' Fees and Costs* after a *Recommended Liability Determination* (RLD) was issued. The RLD was issued as a result of the Illinois Appellate Court, Third District's, opinion remanding this matter to the Commission for a determination of damages. Respondent has filed its *Response to Petition for Attorneys' Fees Filed by Complainant on November 20, 2009*. Complainant has moved to file a reply to Respondent's response. Said motion will be **GRANTED** and all pleadings filed in connection with the pending fee petition will be considered in determining the award of attorneys' fees.

FINDINGS OF FACT

1. Complainant, E. Elizabeth Lewis, is entitled to attorneys' fees and costs in accordance with the *Recommended Liability Determination* entered in this case.
2. All previous findings of fact found in the *Recommended Liability Determination* are incorporated by reference herein.
3. Benassi & Benassi is a law firm headquartered in Peoria, Illinois.
4. Complainant retained Benassi & Benassi in 1995 to represent her in this matter before the Commission.

5. This matter has been before the Commission for approximately fourteen years, during which time it went up on appeal and was remanded to determine the appropriate relief to be awarded to Complainant resulting from Respondent's violation of the Illinois Human Rights Act (Act). (See *Recommended Liability Determination* for a historical review.)

6. Complainant's attorneys have provided extensive documentation representative of the voluminous work performed on her behalf, including, but not limited to, affidavits of attorneys who have worked on this matter.

7. A reasonable hourly rate for Attorney Benassi is \$400.00; a reasonable hourly rate for Attorney Herman is \$250.00; a reasonable hourly rate for Attorney Lacey is \$175.00; a reasonable hourly rate for Attorney Dimmick is \$150.00; and a reasonable hourly rate for Attorney Broers is \$125.00.

8. The hourly rates are based on current rates due to the length of time in which this matter has been in litigation and in accordance with Supreme Court rulings.

9. Attorney Benassi has spent 160.3 hours on this matter.

10. Attorney Dimmick has spent 339.1 hours on this matter.

11. Attorney Broers has spent 64.5 hours on this matter.

12. Attorney Herman has spent 718.5 hours on this matter.

13. Attorney Lacey has spent 211.9 hours on this matter.

CONCLUSION OF LAW

1. A prevailing complainant may recover reasonable attorneys' fees for a reasonable number of hours expended to maintain his action.

2. The current reasonable rate to which an attorney is entitled is the proper rate to be applied to the full fee request, absent an increase in the attorney's standard fee for a reason other than the natural operation of economic forces over time.

DISCUSSION

Once there has been a finding that a respondent has violated the Act and a complainant's damages have been determined, the only issue remaining is the amount of attorneys' fees and costs that should be awarded to complainant under the Act. See **775 ILCS 5/8A-104(G)**.

The fee petition seek \$341,005.00 in fees; \$2,340.68 in costs either paid by the client or charged to the client; and additional out-of-pocket expenses relating to lodging, meal expenses, mileage expenses. etc. which were not charged to or paid by the client.

The purpose of the attorneys' fee provision of the Act is to ensure that attorneys who practice before the Commission are adequately compensated for their services. See **Lieber and Southern Illinois University Board of Trustees**, 34 Ill. HRC Rep. 206 (1987). Further, in accordance with **Lieber**, I have taken into consideration that all doubts are to be resolved in favor of Respondent.

In the case of **Clark and Champaign National Bank**, IHRC, ALS No. 354(J), July 2, 1982, the Commission set forth factors as guidelines when considering attorney fee and cost awards. Under **Clark**, the burden of proof for the petition for an award of attorneys' fees is the same that is applied for a money judgment. *Id.*

The first factor is the factual showing necessary to establish each attorney's hourly rate. The hourly rate should be based on the experience of the attorney and the type of work involved. *Id.*, citing **Copeland and Marshall**, 641 F.2d 880, 892 (D.C. Cir. 1980). The hourly rate may be established in a number of ways including, but not limited to, affidavits outlining the fees of attorneys with comparable experience and qualifications or affidavits showing the actual billing practice of the attorney requesting fees for the relevant time period. See **Tolbert and Fraternal Order of Eagles Olney Aerie**, IHRC, ALS No. S-12132, July 7, 2005. The actual rate that a complainant's

attorney is able to charge in the market place is indicative of prevailing community standards. Id.

The firm of Benassi and Benassi has provided detailed affidavits which establish their years of service. In fact, one need only look to the long and arduous litigation which brought this matter to public hearing to give credence to the time spent on this matter. Additionally, Complainant's fee petition provides the following: (1) affidavits from Attorneys Benassi and Herman, who were involved with this matter, plus additional supporting affidavits; and (2) an extensive day by day detailed analysis of work performed and by whom. The lead attorney, Patricia C. Benassi, has over forty years of legal experience. Her affidavit outlines numerous awards as well as her employment with the National Labor Relations Board.

Hourly Rate of Patricia C. Benassi and Athena Herman

Patricia C. Benassi (Benassi) states that her \$400.00 current hourly rate is an appropriate billing rate for this matter. She claims that she has charged \$400.00 per hour for services for several years and, in fact, in January, 2008, her rates were increased to \$450.00 per hour. She additionally claims that in January, 2008, Athena Herman's (Herman) hourly rate was increased from \$250.00 to \$300.00. Respondent argues that: (1) the hourly rate is excessive for attorneys in the downstate Central region; and (2) that inflation should not be factored in the hourly rate in this matter.

A primary issue in determining the appropriate of fees in the instant case is whether the attorneys should be awarded fees at their current hourly rate or at the hourly rate at the time of the services performed. The Commission has varied its position regarding current hourly rate awards based upon the circumstances presented and the manner in which counsel's claimed billing rate is challenged, if at all. See **Smith and Professional Services**, IHRC, ALS No. 3263, May 7, 1993. See also **Cross and Village of Oak Park**, IHRC, ALS No. 1272, April 29, 1988, in which the Commission

rejected the argument that the fees should be based on current rates rather than market rate at the time of the work performed. However, in **Harris and F.W. Woolworth Company**, IHRC, ALS No. 1059, March 10, 1986, the Commission determined that the current market rates “can be a reasonable method for compensating an attorney for the delay in payment necessarily experienced by an attorney who can recover no fees until litigation is completed and an award is made.” *Id.* In the recent case of **Raila and Domino’s Pizza, Inc.**, IHRC, ALS No. 12016, September 24, 2007, the Commission determined that an attorney is entitled to “the proper rate to be applied to the full fee request, absent an increase in the attorney’s standard fee for a reason other than the natural operation of economic forces over time.” *Id.*, citing **Smith v. Professional Services Industries, Inc.**, IHRC, ALS No. 3263, May 7, 1993.

Based upon the above, I find no reason to decrease the hourly rate requested by attorneys Benassi and Herman.

Number of Hours Reasonably Expended

Respondent argues that since Complainant did not prevail on her race claim, all hours attributed that work on that issue should be deducted from any award of attorneys’ fees. Complainant counters that success on derivative claims makes all work compensable. I find Respondent’s argument meritorious. In **Ginn and Grayline Tours, d/b/a Ame**, IHRC, ALS No. 11883, November 17, 2005, the Commission determined that a complainant must deduct hours spent for a separable and unsuccessful part of the case. See *also* **Hensley and Eckerhart**, 461 U.S. 424 (1983) where the Court went so far as to direct attorneys to maintain billing time records to enable a reviewing court to identify distinct claims. *Id.* **Hensley** also determined that a court should exclude from an award of fees all hours not “reasonably expended” such as “hours that are excessive, redundant or otherwise unnecessary.” *Id.* It is acknowledged by the Commission in **Ginn** that some overlap is inevitable with hours not always neatly pigeonholed. *Id.*

When considering the above cases, it is clear that the Commission has discretion based upon the circumstances and billing practices to determine the appropriate number of hours attributable to an attorney for a fee petition.

Race Claim

The Charge, alleging both race discrimination and retaliation, was filed on June 15, 1995. The original complaint, alleging race discrimination and retaliation, was filed April 24, 1998. The order dismissing the race claim was entered on February 2, 2000. I, therefore, find it necessary to separate all hours expended from June, 1995 through and including the date of the order dismissing the race discrimination claim of February 2, 2000.

In separating the claims, I find it appropriate to award Complainant's attorneys one-half of the fees for that time period. Analyzing the pleading provided by Complaint with a breakdown of dates and attorneys' time, I find the following time expended by the listed attorneys for the relevant time frame:

<u>Attorney</u>	<u>Hourly Rate</u>	<u>Hours Spent</u>	<u>Charge</u>
Benassi:	\$400.00	30.8	\$12,320.00
Dommick	150.00	77.1	11,750.00
Broers	125.00	3.3	412.50
Total Charges:			\$24,482.50

(See Appendices for breakdown.)

I, therefore, find it appropriate to reduce the above fee by one-half or \$12,241.25.

Costs Incurred in Litigating this Matter

Complainant's attorneys claim various out-of-pocket expenses incurred in representing Complainant in the instant matter.

Filing Fees - \$ 40.00

Subpoena Fees -	104.95
Witness Fees -	180.74
Copying Fees -	30.00
Photocopying Fees -	439.50
Copying Fees - -	6.48
Courier Fees -	251.16
Transcript Costs -	1,287.85

Total: \$2,340.68

The Act authorizes recovery of expenses or costs as well as fees. See **775 ILCS 5/8A-104(G)**. The Commission has also routinely held that charges such as photocopying are routinely denied unless those expenses are billed to the client. It is presumed that these expenses are considered overhead and reflected in counsel's hourly rate. See **Harrell and Barber-Colman Co., n/k/a Invensys Building Systems, Inc.**, IHRC, ALS No. 9911, December 21, 2001. See also **Sprinkle and Rivers Edge Complex, Inc.**, IHRC, ALS No. 10565, August 7, 2000. Complainant's attorney has stated, in the fee petition, that the above costs were either charged to the client or paid by the client. I, therefore, find such amount of \$2,340.68 an allowable award in the fee petition.

Complainant, however, also seeks additional fees for lodging, meals, additional duplicating, long distance telephone calls, excess postage and travel expenses. The fee petition does not suggest that these additional charges were either paid by Complaint or charged to Complainant. I, therefore, find these costs not reimbursable.

RECOMMENDATION

Based on the foregoing, it is hereby recommended that:

1. Complainant's motion to file a reply to Respondent's response is **GRANTED**.
2. Respondent be ordered to pay Complainant a total of \$328 763.75 as attorney's fees in this matter.
3. Respondent be ordered to compensate Complainant \$2,340.68 as out-of-pocket expenses incurred in this matter.

4. Complainant receive all other relief as recommended in the Recommended Liability Determination.

HUMAN RIGHTS COMMISSION

BY: _____
GERTRUDE L. MCCARTHY
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED February 1, 2010

Appendix 1

Time Charged by Attorney Benassi from 12/3/96 - 1/3/00 at \$400.00 per hour

<u>Date</u>	<u>Time Spent</u>	<u>Total Fee</u>
12/3/96	.5	
7/31/97	.9	
9/2/97	1.0	
9/11/97	1.0	
10/22/97	2.0	
6/3/98	1.0	
6/20/98	.8	
6/29/98	1.1	
7/10/98	1.0	
7/13/98	.8	
7/14/98	.1	
7/15/98	.8	
8/5/98	.1	
8/25/98	.3	
8/28/98	.8	
9/1/98	1.2	
9/3/98	.7	
9/8/98	.3	
9/9/98	.3	
9/14/98	.2	
9/25/98	.3	
10/5/98	1.5	
10/7/98	.5	
10/27/98	.3	
11/9/98	.2	
12/9/98	.5	
12/30/98	.3	
3/22/99	2.0	
4/7/99	.9	
4/19/99	1.0	
4/20/99	.8	
4/21/99	1.0	
4/26/99	.3	
7/14/99	.3	
7/19/99	2.3	
7/21/99	.3	
8/9/99	.4	
8/18/99	.2	
8/23/99	.5	
9/20/99	.5	
12/2/99	1.5	
1/3/00	.3	
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	30.8	\$ 12,320.00

APPENDIX 2

Timed Charged by Attorney Dommick from 6/3/98 – 1/3/00 at \$150.00 per hour

<u>Date</u>	<u>Time Spent</u>	<u>Total Fee</u>
6/3/98	1.0	
6/20/98	6.8	
6/29/98	.7	
7/10/98	3.3	
7/13/98	.6	
7/14/98	.7	
7/15/98	.8	
8/5/98	.4	
8/25/98	1.0	
8/28/98	1.5	
9/1/98	1.7	
9/3/98	.3	
9/8/98	.3	
9/9/98	.3	
9/14/98	.7	
9/25/98	3.6	
10/5/98	4.3	
10/7/98	.4	
10/27/98	8.5	
11/9/98	.2	
12/9/98	1.0	
12/30/98	6.0	
3/22/99	2.0	
4/7/99	.6	
4/19/99	.7	
4/20/99	3.5	
4/21/99	1.0	
4/26/99	.2	
7/14/99	3.5	
7/19/99	9.8	
7/21/99	.3	
8/9/99	.3	
8/18/99	.4	
8/23/99	.5	
9/20/99	.3	
12/2/99	9.2	
1/3/00	.7	
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	76.1	\$ 11 505.00

Appendix 3

Time Charged by Attorney Broers from 12/3/96 - 10/22/97 at \$125.00 per hour

<u>Date</u>	<u>Time Spent</u>	<u>Total Fee</u>
12/3/96	.8	
7/31/97	.5	
9/2/97	.5	
9/11/97	1.0	
10/22/97	.5	
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	3.3	\$ 412.50

On April 2, 1999, Complainant, through her attorney, filed an *Amended Complaint of Civil Rights Violation* adding additional incidents of alleged retaliatory conduct by Respondent.

On February 2, 2000, Administrative Law Judge (ALJ) Denise Church granted partial Summary Decision which limited the issue to be presented at a public hearing to the retaliation charge, ALJ Church determined that summary decision was appropriate on the charges of the Complaint which alleged race discrimination.

The matter was eventually assigned to ALJ Kelli Gidcumb who presided over the public hearing.

After the public hearing held in June, 2001, ALJ Gidcumb submitted a ROD to the Commission. The ROD, dated June 3, 2002, recommended that the Commission "dismiss with prejudice the Complaint of E. Elizabeth Lewis against Respondent Peoria Housing Authority, together with the underlying charge number 1995SF0828."

On July 24, 2002, Complainant filed *Exceptions to Recommended Order and Decision*.

On August 7, 2002, Respondent filed its *Response to Complainant's Exceptions to Recommended Order and Decision*. By that date, ALJ Gidcumb had left the Commission.

The Commission declined to review the ALJ's decision and the ROD was finalized.

Complainant appealed the Commission's decision.

On July 15, 2004, the Illinois Appellate Court, Third District, rendered its decision. The Appellate Court determined that "the Commission's finding is against the manifest weight of the evidence, the ruling is reversed and the cause remanded pursuant to section 5/8A-104 of the Human Rights Act (775 ILCS 5/88A-104 (West 2002) for a determination of the relief to which Lewis is entitled."

Therefore, the only issue before the Commission is what award of damages Complainant should receive as a result of Respondent's violation of the Act.

On November 30, 2005, the matter was reassigned to me. Pursuant to a telephone conversation with the parties, it was agreed to waive an additional public hearing and have a decision rendered on the complete record.

As set forth above, this decision will be limited to the issue of an award of damages to Complainant.

Findings of Fact

Respondent has been found to be in violation of the Illinois Human Rights Act (Act), 775 ILCS 5/6101 (A) which prohibits *"retaliation against a person because he or she has opposed that which he or she reasonably and in good faith believes to be unlawful discrimination. . . "*

Wage History of Complainant

1. On May 14, 1994, Complainant, as Deputy Secretary, received a 5% permit increase for an annual salary of \$21,826.35. (Exhibit J 11.)
2. On April 10, 1995, Complainant, as a transfer to Receptionist/Switchboard Operator, received a salary decrease for an annual salary of \$17,418.71. (Exhibit J13.)
3. On July 1, 1995, Complainant received a 3% retroactive increase for an annual salary of \$17,941.31. (Exhibit J15.)
4. On April 15, 1995, Complainant was involuntarily terminated. (Exhibit J 16.)
5. On August 4, 1997, Complainant was reinstated with an hourly wage of \$9.4815. (Exhibit J 17.)
6. On September 1, 1997, Complainant received a 3% increase to an hourly rate of \$9.7659. (Exhibit J 18.)
7. On September 1, 1998, Complainant received a 3.5% increase to an hourly rate of \$10.1077. (Exhibit J 20)

8. On July 5, 1999 Complainant received a promotion, from Eligibility Clerk to Assistant Property Manager, and pay raise to an hourly salary of \$10.62. (Exhibit J 21.)

9. On September 1, 1999, Complainant received a 3.84% increase to an hourly rate of \$11.03. (Exhibit J 42.)

10. On September 1, 2000, Complainant received a 4% increase, to an hourly rate of \$11.47. (Exhibit J 43.)

11. On January 16, 2001, Complainant received a rate increase to an hourly rate of \$13.15. (Exhibit J 46.)

12. On June 18, 2001, Complainant received a promotion from Assistant Property Specialist to Property Specialist and an increase to an hourly rate of \$14.80. (Exhibit J 45.)

Conclusion of Law

The Illinois Human Rights Commission has jurisdiction over the parties and the subject matter of this action.

Discussion

Damages

Back Pay/Lost Pension

Respondent's Exhibit No. 24, admitted into evidence and not objected to by Complainant, is helpful in determining back wages. That document suggests that the total maximum wage loss is \$22,919.00. That document, however, does not include an off-set for a part of the time period from April 15, 1996 through August 4, 1997. It was stipulated that Complainant is not seeking wage losses for that time.

Complainant also testified that her pension benefits are connected to her salary. (Tr. p. 61.)

As set forth above, Complainant is not seeking lost wages for the time period from April 15, 1996 through August 4, 1997. Respondent's Exhibit 24 calculates lost

wages for part of the time period for which Complainant is not seeking compensation. Exhibit 24, page 2, shows the time period of September 1, 1995 through August 15, 1996 as a wage loss of \$4,976.00. Pro-rating a reduction in loss wages for the time period from April 15, 1996 through August 15, 1996, I find that the \$4,976.00 figure should be reduced by \$2,075.00. I, therefore, find that Complainant should be awarded back pay in the amount of **\$20,844.00**.

Emotional Distress

Complainant also requests compensation for the emotional distress she suffered due to the discriminatory conduct of Respondent. It has long been established that the Commission's statutory authority to award a prevailing complainant actual damages includes the ability to award monetary damages for emotional distress. **Village of Bellwood v. Illinois Human Rights Comm'n.**, 184 Ill.App.3d 339, 355, 541 N.E.2d 1248, 133 Ill.Dec. 810 (1st Dist. 1989). In this case Complainant testified at the public hearing to the stress she experienced as a result of the discriminatory actions of Respondent. She testified that: (1) her mental and physical condition changed during the time that she filed a grievance (Tr. p. 42); (2) that she had headaches and stomach problems (Tr. p. 44); she became withdrawn, depressed and reclusive (Tr. p. 42). She further testified that she sought medical help and that a mental examination was performed resulting in her seeing a psychiatrist. (Tr. pp. 50-51; 53-54). Complainant's testimony was supported by Karmen Johnson and Eugene Petty who testified on her behalf. It is recommended that Complainant be awarded **\$25,000.00** for emotional distress.

Finally, Respondent should be required to pay Complainant's reasonable attorney's fees and costs. That amount will be determined after review of the parties' written submission on the issue.

RECOMMENDATION

Based upon the foregoing, it is recommended that an order be entered awarding Complainant the following relief:

- A. That Respondent pay to Complainant the sum of \$20,844.00 as compensation for lost back pay;
- B. The Respondent pay to Complainant prejudgment interest on the back pay award, such interest to be calculated as set forth in 56 Ill. Admin. Code., Section 5300.1145;
- C. That Respondent make Complainant whole as to lost pension benefits;
- D. That Respondent pay to Complainant the sum of \$25,000.00 as compensation for the emotional damages suffered by her as a result of Respondent's actions in this matter;
- E. That Respondent clear from Complainant's personnel records all references to the filing of the underlying charge of discrimination and the subsequent disposition thereof;
- F. That Respondent pay to Complainant the reasonable attorney's fees and costs incurred in prosecuting this matter, that amount to be determined after review of a motion and detailed affidavit meeting the standards set forth in **Clark and Champaign National Bank**, IHRC, 354(J), July 2, 1982, said motion and affidavit to be filed within 21 days after the service of this Recommended Liability Determination; failure to submit such a motion will be seen as a waiver of attorney's fees;
- G. If Respondent contests the amount of requested attorney's fees, it must file a written response to Complainant's motion within 21 days of the service of said motion; failure to do so will be taken as evidence that Respondent does not contest the amount of such fees;

H. The recommended relief in paragraphs A through E is stayed pending issuance of a Recommended Order and Decision with the issue of attorney's fees resolved.

HUMAN RIGHTS COMMISSION

BY: _____
GERTRUDE L. MCCARTHY
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED November 4, 2009